

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

SHIRLETTA SALES,

Plaintiff,

Case No. 3:18-cv-158

vs.

I SUPPLY CO., *et al.*,

District Judge Walter H. Rice
Magistrate Judge Michael J. Newman

Defendants.

**REPORT AND RECOMMENDATION¹ THAT DEFENDANTS' MOTION TO DISMISS
(DOC. 5) BE DENIED AS MOOT WITHOUT PREJUDICE TO REFILE**

This civil case is before the Court on Defendants' motion to dismiss filed pursuant to Fed. R. Civ. P. 12(b)(6). Doc. 5. *Pro se* Plaintiff timely filed a memorandum in opposition to Defendants motion (doc. 6) and, in conjunction therewith, moved for leave to file an amended complaint. Doc. 7. By separate entry, the Court granted *pro se* Plaintiff's unopposed motion for leave to amend the complaint and directed that *pro se* Plaintiff's amended complaint be separately filed by the Clerk of Courts. Doc. 9. Because Defendants' motion to dismiss is directed to *pro se* Plaintiff's original complaint, the undersigned **RECOMMENDS** that Defendants' motion (doc. 5) be **DENIED AS MOOT AND WITHOUT PREJUDICE TO REFILE**. *See Laning v. Doyle*, No. 3:14-cv-24, 2014 WL 2805240, at *1-2 (S.D. Ohio June 20, 2014) (Rice, J.).

Date: July 16, 2018

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendation.

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within **FOURTEEN** days after being served with this Report and Recommendation. This period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d). Parties may seek an extension of the deadline to file objections by filing a motion for extension, which the Court may grant upon a showing of good cause.

Any objections filed shall specify the portions of the Report and Recommendation objected to, and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendation is based, in whole or in part, upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs.

A party may respond to another party's objections within **FOURTEEN** days after being served with a copy thereof. As noted above, this period is not extended by virtue of Fed. R. Civ. P. 6(d) if served on you by electronic means, such as via the Court's CM/ECF filing system. If, however, this Report and Recommendation was served upon you by mail, this deadline is extended to **SEVENTEEN DAYS** by application of Fed. R. Civ. P. 6(d).

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140, 153-55 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).